over IP traffic such as packetized voice traffic.[2469] Is the requirement that carriers negotiate in good faith in response to requests for IP-to-IP interconnection reasonably ancillary to the Commission's exercise of its authority under a statutory provision, such as the provisions identified above?[2470] If so, what standards and enforcement mechanisms should apply? If the Commission were to rely on ancillary authority to impose a good faith negotiation requirement, would it also need to adopt associated complaint procedures, or could the existing informal and formal complaint processes, which derive from section 208, nonetheless be interpreted to extend more broadly than alleged violations of Title II duties? Similarly, if the Commission relies on ancillary authority, could it extend the obligation to negotiate in good faith beyond carriers to include all providers of telecommunications? If so, should the Commission do so?

1358. Finally, we seek comment on whether the obligation for carriers to negotiate IP-to-IP interconnection in good faith should be grounded in other statutory provisions identified by commenters. If so, what statutory provisions, and what are the appropriate standards and enforcement mechanisms? Alternatively, should the Commission rely on multiple statutory provisions? If so, which provisions, and how would they operate in conjunction?

4. IP-to-IP Interconnection Policy Frameworks

a. Alternative Policy Frameworks

1359. We seek comment on the appropriate role for the Commission regarding IP-to-IP interconnection. In particular, we seek specific comment on certain proposed policy frameworks described below. With respect to each such framework, we seek comment not only on the policy merits of the approach, but also the associated implementation issues. These include not only any rules the Commission would need to adopt or revise, but also any forbearance from statutory requirements that would be needed to implement the particular framework for IP-to-IP interconnection.[2471]

(i) Measures To Encourage Efficient IP-to-IP Interconnection

1360. At a minimum, we believe that any action the Commission adopts in response to this FNPRM should affirmatively encourage the transition to IP-to-IP interconnection where it increases overall efficiency for providers to interconnect in this manner. We seek comment below on possible elements of such a framework, as well as alternative approaches for encouraging efficient IP-to-IP interconnection.

1361. *Responsibility for the Costs of IP-to-TDM Conversions.* Some commenters have proposed that carriers electing TDM interconnection be responsible for the costs associated with the IP-TDM conversion.[2472] In particular, these commenters contend that carriers that require such conversion,

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[2469] 47 U.S.C. § 152(a).

[2470] As discussed below, Sprint asserts that the Commission has authority under Title I to adopt requirements for IP-to-IP interconnection as ancillary to its execution of sections 251 and 252, and consistent with the policies specified in various other provisions of the Act. *See infra* para. 1396.

[2471] 47 U.S.C. § 160.

[2472] *See, e.g.*, Charter *USF/ICC Transformation NPRM* Reply at 5-6 & n.14; NCTA *August 3 PN* Comments at 18 n.42. *See also* Letter from Karen Reidy, Vice President of Regulatory Affairs for COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. WC Docket Nos. 11-119, 10-90, 07-135, 06-122, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 at 2 (filed Aug. 11, 2011) (COMPTEL Aug. 11, 2011 *Ex Parte* Letter) (asserting that competitive LECs currently incur unnecessary costs "associated with converting IP calls to TDM format, including the costs of purchasing, operating, and maintaining numerous gateways").

sometimes despite the fact that they have deployed IP networks themselves, effectively raise the costs of their competitors that have migrated to IP networks.[2473] If a carrier that has deployed an IP network receives a request to interconnect in IP, but, chooses to require TDM interconnection, we propose to require that the costs of the conversion from IP to TDM be borne by the carrier that elected TDM interconnection (whether direct or indirect).[2474] We seek comment on how to define the scope of carriers with IP networks that should be subject to such a requirement. We further seek comment on what specific functions the carrier electing TDM interconnection should be financially responsible for under such a requirement. Should the financial responsibility be limited to the electronics or equipment required to perform the conversion? Or should the financial responsibility extend to other costs, such as any potentially increased costs from interconnecting in many locations with smaller-capacity connections rather than (potentially) less expensive interconnection in a smaller number of locations with higher-capacity connections? If there are disputes regarding payments, should the losing party bear the cost of those disputes?

1362. Would the Commission need to take steps to ensure the rates associated with those functionalities remain reasonable, and under what regulatory framework? For example, would *ex ante* rules or *ex post* adjudication in the case of disputes be preferable? Would the costs of the relevant functions need to be measured, and if so how? In the case of rates for such functionalities charged by incumbent LECs, should the otherwise-applicable rate regulations apply to such offerings? In the case of carriers other than incumbent LECs, how, if at all, would such rates be regulated? Would the ability of the carrier electing TDM interconnection to self-deploy the IP-to-TDM conversion technology or purchase it from a third party[2475] rather than paying the other provider constrain the rate the other provider could charge for such functionality? Would the Commission also need to regulate the terms and conditions of such services? If so, what is the appropriate regulatory approach?

1363. Would some pairs of carriers with IP networks that interconnect directly or indirectly in TDM today both choose to continue interconnecting in TDM? If so, how would the commission ensure that any requirements it adopted addressing financial responsibility for IP-to-TDM conversions did not alter the *status quo* in such circumstances? For example, could the obligation to pay these charges be triggered through a formal process by which one interconnected carrier requests IP-to-IP interconnection and, if the second interconnected carrier refuses (or fails to respond), the second carrier then would be required to bear financial responsibility for the IP-to-TDM conversion? Would the Commission need to specify a timeline for the process, including the time by which a carrier receiving a request for IP-to-IP interconnection either must respond or be deemed to have refused the request (and thus become subject to the financial responsibility for the IP-to-TDM conversion)? If so, what time periods are reasonable?

1364. What mechanism would be used to implement any such charges? Should carriers rely solely on agreements? Or should carriers tariff these rates, perhaps as default rates that apply in the absence of an agreement to the contrary? Should the carrier seeking to retain TDM interconnection be permitted to choose to purchase the conversion service from any available third party providers of IP-to-TDM conversions, rather than from the carrier seeking IP-to-IP interconnection? If so, how would that be implemented as part of the implementation framework?

[2473] *See, e.g.*, Cablevision *USF/ICC Transformation NPRM* Comments at 3-5; COMPTEL *USF/ICC Transformation NPRM* Comments at 35; Google *USF/ICC Transformation NPRM* Comments at 5.

[2474] *See supra* para. 1340.

[2475] *See, e.g.*, Letter from Edward Kirsch, counsel for Hypercube, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; GN Docket No. 09-51, Attach. at 2 (filed Sept. 1, 2011) (describing "commercial network bridge providers . . . facilitat[ing] indirect IP interconnection wherever direct IP interconnection is not available or is less efficient").

(ii) Specific Mechanisms To Require IP-to-IP Interconnection

1365. We seek comment on certain other approaches for requiring IP-to-IP interconnection raised in the record.

1366. *Scope of Issues To Address Under Different Policy Frameworks Requiring IP-to-IP Interconnection.* We seek comment on the general scope of the Commission's appropriate role concerning IP-to-IP interconnection, subject to certain baseline requirements. For example, if the baseline only extended to certain terms and conditions,[2476] would providers have adequate incentives to negotiate reasonable IP-to-IP interconnection rates? What specific terms and conditions would need to be subject to the policy framework, and which could be left entirely to marketplace negotiations?[2477] Should any oversight of terms and conditions take the form of general guidelines, perhaps subject to case-by-case enforcement, rather than more detailed *ex ante* rules? Where in a provider's network would IP need to be deployed for it to be subject to such requirements? To inform our analysis of these issues, we seek comment on the physical location of IP POIs, with concrete examples of traffic and revenue flows, as well as who bears the underlying costs of any facilities used, whether in the original installation, or in maintenance and network management. What are the implementation costs of the provision of Session Initiation Protocol (SIP) at the point of interconnection, and the extent to which voice quality would be compromised without such provision?[2478] How would current policies, if maintained, provide efficient or inefficient incentives for point-of-interconnection consolidation, and/or the provision of efficient interconnection protocols, such as SIP? Would adopting a timetable for all-IP interconnection be necessary or appropriate, or would carriers have incentives to elect IP-to-IP (rather than TDM) interconnection whenever it is efficient to do so?

1367. In addition, would it be necessary or appropriate to address providers' physical POIs in the context of IP-to-IP interconnection? What factors should the Commission consider in evaluating possible policy frameworks for physical POIs, such as the appropriate burden each provider bears regarding the cost of transporting traffic? If the Commission were to address POIs, would we need to mandate the number and/or location of physical POIs, or would general encouragement to transition to one POI per geographic area larger than a LATA be appropriate?[2479] If so, what should that larger area

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[2476] *See, e.g.*, Ad Hoc Aug. 18, 2011 *Ex Parte* Letter at 9 ("as an initial matter, the FCC could leave to the market IP-to-IP rates between carriers, including taking a hands-off approach to whether rates should be capacity-based or based on another measure").

[2477] *See, e.g.*, COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 2 ("the basic elements of interconnection – i.e., the physical link, interface, signaling and database access – will be just as important to Managed Packet networks as they have been to traditional circuit-switched facilities").

[2478] *See, e.g.*, *id.* at 4-5 (discussing SIP and other protocols used to establish and manage IP voice calls); *id.* at 6 (discussing the capability for voice QoS in the exchange of traffic).

[2479] *See* Level 3 *USF/ICC Transformation NPRM* Comments at 12-13; COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 9.

be?[2480] How, if at all, would any regulations of physical POIs impact the relative financial responsibilities of the interconnected carriers for transporting the traffic?[2481]

1368. We also seek comment on providers' incentives under a policy framework that involves some Commission oversight of IP-to-IP interconnection rates, as well as terms and conditions. If an IP-to-IP interconnection policy framework addresses interconnection rates, how should it do so? For example, would it be sufficient to require that all VoIP traffic be treated identically, including in terms of price? Would it be appropriate to require that interconnection for the exchange of VoIP traffic be priced the same as interconnection for the exchange of all other IP traffic? If the price for the interconnection arrangement itself is distinct from the compensation for the exchange of traffic, how should each be regulated? Would a differential between the costs/revenues in the pricing of IP-to-IP interconnection and traffic exchange relative to TDM interconnection and traffic exchange create inefficient incentives to elect one form of interconnection rather than the other? If so, should any charges for both the interconnection arrangement and traffic exchange under an IP-to-IP interconnection framework mirror those that apply when carriers interconnect in TDM? Or should the Commission adopt an alternative approach? For example, should the Commission provide for different rate levels or rate structures than otherwise apply in the TDM context? What is the appropriate mechanism for implementing any such framework? Should the regulated rates, terms, and conditions be defaults that allow providers to negotiate alternatives?

1369. *Specific Proposals For IP-to-IP Interconnection.* Some commenters contend that the Commission should require incumbent LECs to directly interconnect on an IP-to-IP basis under section 251(c)(2) of the Act.[2482] In addition to the section 251(c)(2) legal analysis upon which we seek comment below, we seek comment on the policy merits of such an approach.[2483] What requirements would the Commission need to specify under such an approach? In addition, by its terms, section 251(c)(2) only imposes obligations on incumbent LECs. Is that focus appropriate, or would the Commission need to address the requirements applicable to other carriers, as well?[2484] If so, how could that be done under such an approach?

1370. Alternatively, should we adopt a case-by-case adjudicatory framework somewhat analogous to the approach of section 251(c)(2) and 252, where we require IP-to-IP interconnection as a

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[2480] *See, e.g.*, EarthLink *USF/ICC Transformation NPRM* Comments at 9 (suggesting one POI per state); XO *USF/ICC Transformation NPRM* Comments at 31 (suggesting a default of no more than one POI per state but the Commission should encourage regional POIs). *But see, e.g.*, CenturyLink *USF/ICC Transformation NPRM* Comments at 73 ("the Commission is a long way from being in a position to dictate the details of the ideal POI rules for such networks - even if [it] determined that it had the authority to do so").

[2481] We seek comment above on the possible need for rules governing the "edge" that defines the scope of functions encompassed by bill-and-keep under the reforms adopted in this Order. *See supra* Section XVII.N.

[2482] *See, e.g.*, Cablevision *USF/ICC Transformation NPRM* Comments at 8-9; COMPTEL *USF/ICC Transformation NPRM* Comments at 8; EarthLink *USF/ICC Transformation NPRM* Comments at 4-6; PAETEC *et al. USF/ICC Transformation NPRM* Comments at 5-8; Cbeyond *et al. USF/ICC Transformation NPRM* Reply at 5-12. *Cf.* NCTA *August 3 PN* Comments at 18 n.43 ("As set out in our comments filed in response to tw telecom's petition for declaratory ruling, section 251(c)(2) of the Act requires incumbent LECs to provide direct IP-to-IP interconnection for the transmission and routing of facilities-based VoIP services. . . . Although it is important for the Commission quickly to address the refusal of incumbent LECs to directly interconnect in IP format for the provision of VoIP services, the Commission need not address those issues in this proceeding.").

[2483] See supra Section XVII.P.3.b.

[2484] *Cf.* Nebraska Rural Companies *August 3 PN* Comments at 60 (expressing concern that small incumbent LECs might be at a negotiating disadvantage relative to larger providers).

matter of principle, but leave particular disputes for case-by-case arbitration or adjudication? Under such an approach, would the Commission need to establish some general principles or guidelines regarding how arbitrations or adjudications will be resolved, and if so, with respect to what issues? Which providers should be subject to any such obligations—incumbent LECs, all carriers that terminate traffic, or a broader scope of providers? Should the states and/or the Commission provide arbitration or dispute resolution when providers fail to reach agreement, and what processes should apply? Does the Commission have legal authority to adopt such an approach?

1371. Other commenters propose that we require IP-to-IP interconnection under section 251(a)(1).[2485] We seek comment below on the possibility of designating one of the carriers as entitled to insist upon direct (rather than indirect) interconnection under section 251(a)(1).[2486] However, if the Commission required IP-to-IP interconnection under 251(a)(1) but permitted either carrier to insist upon indirect interconnection, could the Commission require the carrier making that election bear certain costs associated with indirect interconnection, such as payment to the third party for the indirect interconnection arrangement, bearing the cost of transporting the traffic back to its own network and customers from the point where the carriers are indirectly interconnected, or other costs?

1372. As another alternative, T-Mobile and Sprint proposed that each service provider establish no more than one POI in each state using Session Initiation Protocol (SIP) to receive incoming packetized voice traffic and be required to provide at its own cost any necessary packet-to-TDM conversion for a short-term transition period.[2487] Then, in the longer term, the parties suggest that the Commission use the Technical Advisory Committee (TAC) "to develop recommendations for the protocol for receiving packet-based traffic and to propose efficient regional packet-based interconnection points."[2488] T-Mobile and Sprint suggest acting on the TAC's recommendations after public notice and the opportunity for comment.[2489] We seek comment on T-Mobile and Sprint's proposal. If the Commission moves forward with an approach like T-Mobile/Sprint's, how much time should the Commission allow for each of the two time periods proposed?[2490] Based on the transition periods adopted in this Order, how would this two-step approach work?

[2485] *See, e.g.*, Letter from Teresa K. Gaugler, Federal Regulatory Counsel, XO, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-119, 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Attach. at 5 (filed Sept. 6, 2011); Letter from Helen E. Disenhaus, counsel for Hypercube, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 1-2 & Attach. at 2-3 (filed Sept. 30, 2011).

[2486] *See infra* paras. 1381-1383.

[2487] *See* Letter from Kathleen O'Brien Ham, VP – Federal Regulatory Affairs, T-Mobile, and Charles W, McKee, VP – Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Jan. 21, 2011) (T-Mobile/Sprint Jan. 21, 2011 *Ex Parte* Letter). In its comments Level 3 suggests that the Commission allow for a market-determined number of POIs rather than mandating a specific number of POIs, i.e. one per state. *See* Level 3 *USF/ICC Transformation NPRM* Comments at 12.

[2488] T-Mobile/Sprint Jan. 21, 2011 *Ex Parte* Letter at 3. Specifically, Sprint suggests that the Commission refer to the TAC as soon as possible "(1) the locations where packetized voice traffic should be exchanged; and (2) a set of minimum (and default only) technical requirements pertaining to the transport of voice traffic that all IP networks would support." Sprint Nextel *USF/ICC Transformation NPRM* Comments at 22.

[2489] *See* T-Mobile/Sprint Jan. 21, 2011 *Ex Parte* Letter at 3.

[2490] For example, in its comments Level 3 suggests a nine-year transition plan for comprehensive intercarrier compensation reform and suggests that Commission involvement in the transition to IP-to-IP interconnection also follow the nine-year timeframe. *See* Level 3 *USF/ICC Transformation NPRM* Comments at 3, 13.

1373. We also seek comment on XO's proposal to facilitate the move to IP-to-IP interconnection.[2491] XO recommends that the Commission "require every telecommunications carrier to provide IP-based carrier-to-carrier interconnection (directly or indirectly) within [five] years, regardless of the technology the carrier uses to provide services to its end users."[2492] During the transition period parties could continue to negotiate an agreement with a third party to fulfill its interconnection obligations.[2493] XO suggests that "[i]f a carrier chose to continue delivering traffic to the TDM POI, it would continue to pay higher intercarrier compensation rates"[2494] while the IP termination rate would be set lower to incentivize carriers to deliver traffic in an IP format and therefore deploy IP networks to avoid the costs of converting from TDM to IP.[2495] After the proposed five-year transition, XO recommends that terminating carriers would be able "to refuse to accept traffic via TDM interconnection where IP interconnection is available."[2496] We note that the Commission has adopted a different approach to intercarrier compensation for VoIP traffic in this Order than that recommended by XO. What impact would that have on XO's IP-to-IP interconnection proposal?[2497] In addition, is a five-year transition period to IP interconnection sufficient? Should the Commission allow providers to refuse TDM traffic as XO proposes? Are there any potential negative consequences for having different pricing for TDM and IP interconnection?

1374. We also observe that many providers interconnect indirectly today, and some commenters anticipate that indirect interconnection will remain important in an IP environment, as well.[2498] If an IP-to-IP interconnection policy framework granted providers the right to direct IP-to-IP interconnection, would this reduce or eliminate providers' incentives to interconnect indirectly? Alternatively, if the policy framework gave providers flexibility to interconnect either directly or indirectly, would this result in demand for indirect IP-to-IP interconnection that gives some providers incentives to offer services that enable third parties to interconnect on an IP-to-IP basis?

(iii) Commercial Agreements Not Regulated by the Commission

1375. We also seek comment on proposals to adopt a policy framework that would leave IP-to-IP interconnection largely unregulated by the Commission.

1376. *Incentives Under Unregulated Commercial Agreements.* Has the Commission, through its actions in this Order, sufficiently eliminated disincentives to IP-to-IP interconnection arising from

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[2491] *See* XO *USF/ICC Transformation NPRM* Comments at 31. *See also* Letter from Tiki Gaugler, Senior Manager & Counsel, XO to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at Attach. (filed Sept. 10, 2010) (Sept. 10, 2010 XO *Ex Parte* Letter).

[2492] XO *USF/ICC Transformation NPRM* Comments at 31. XO also suggests that the Commission eliminate LATA and other jurisdictional boundaries for traffic exchanged in IP. *See id.*

[2493] *See id.*

[2494] *Id.* at 32.

[2495] *See id.*

[2496] *Id.* at 33.

[2497] *See, e.g.*, COMPTEL *USF/ICC Transformation NPRM* Comments at 5 ("'Individual carriers' business plans will dictate the timing of network upgrades").

[2498] *See, e.g.*, Sprint July 29, 2011 *Ex Parte* Letter at 9 ("It is not realistic to believe that all 1,800 to 2,000 networks will connect directly with each other. Rather, as is the case today with PSTN interconnection, in many circumstances it will be more efficient for two networks to interconnect indirectly with each other, using an IP network operated by a third party.").

intercarrier compensation rules?[2499] Even if there were no disincentive arising from the intercarrier compensation rules, would some competitors seek to deny IP-to-IP interconnection on reasonable rates, terms, and conditions to raise their rivals' costs?[2500] Are there circumstances where a refusal to interconnect on an IP-to-IP basis would result in service disruptions?[2501]

1377. *Specific Proposals for Unregulated Commercial Agreements.* Verizon contends that "[t]he efficient way to allow IP interconnection arrangements to develop would be to follow . . . the tremendously successful example of the Internet, which relies upon voluntarily negotiated commercial agreements developed over time and fueled by providers' strong incentives to interconnect their networks."[2502] As AT&T argues, "the interdependence of IP networks, along with the multiplicity of indirect paths into any broadband ISP's network—for the transmission of a VoIP call or any other type of IP application—deprive any such ISP of any conceivable terminating access 'monopoly' over traffic bound for its subscribers."[2503] Thus, commenters contend that the "government should avoid prescribing the terms that will govern complex and evolving relationships among private sector actors."[2504] In other contexts, the Commission has recognized that a provider might not always voluntarily grant another provider access to its network on just and reasonable rates, terms, and conditions and that, in certain circumstances, some regulatory protections might be warranted.[2505] Is interconnection in this context distinguishable, and if so, how? If not, how could the Commission identify the circumstances where a less regulated (or unregulated) approach might be warranted from those where some regulation is needed?

(iv) Other Proposals and Related Issues

1378. In addition to the specific proposals described above, we seek comment on any alternative approaches that commenters would suggest. In addition to the policy merits of the approach, we seek comment on the Commission's legal authority to adopt the approach, and how that approach would be implemented, including any new rules or rule changes.

1379. We also observe that there is a growing problem of calls to rural customers that are being delayed or that fail to connect.[2506] We seek comment on whether any issues related to those concerns are

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[2499] We note that the Order does not fully reform all intercarrier compensation elements, and we seek comment in the FNPRM regarding how to complete the reform of those elements. *See supra* Section XVII.M.

[2500] *See, e.g.*, COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 8 n.15 ("Early in the adoption of [Managed Packet transport] arrangements, however, incumbents have the incentive to impose additional costs on rivals that have deployed more efficient Managed Packet technology by requiring that competitive entrants interconnect through the incumbent's obsolete circuit-switched technology, even where a more efficient Managed Packet transport facility is available.").

[2501] *See, e.g.*, COMPTEL Nov. 1, 2010 *Ex Parte* Letter, Attach. at 5-6 (describing a position taken by AT&T).

[2502] Verizon *USF/ICC Transformation NPRM* Comments at 16.

[2503] AT&T *USF/ICC Transformation NPRM* Reply at 11.

[2504] Verizon *USF/ICC Transformation NPRM* Comments at 16-17. *See also* CenturyLink *USF/ICC Transformation NPRM* Comments at 71; AT&T *USF/ICC Transformation NPRM* Reply at 13-14.

[2505] *CMRS Interconnection Second NPRM*, 10 FCC Rcd at 10682-83, paras. 31-32. *See also, e.g., 2011 Pole Attachment Order*, 26 FCC Rcd at 5327, para. 199 (discussing incumbent LEC concerns about the ability to negotiate access to electric utilities' pole networks on just and reasonable rates, terms, and conditions, notwithstanding the fact that the incumbent LEC itself owns a pole network).

[2506] *See, e.g., FCC Launches Rural Call Completion Task Force to Address Call Routing and Termination Problems In Rural America*, News Release, (rel. Sept. 26, 2011). The task force recently held a workshop "to identify specific (continued...)

affected by carriers' interconnection on an IP-to-IP basis, or to any interconnection policy framework the Commission might adopt in that context. Are there components of, or modifications to, any such framework that the Commission should consider in light of concerns about calls being delayed or failing to connect?

b. Statutory Interconnection Frameworks

1380. We anticipate that the Commission may need to take some steps to enable the efficient transition to IP-to-IP interconnection, and we seek comment on the contours of our statutory authority in this regard. Just as there are varied positions regarding the appropriate policy framework for IP-to-IP interconnection, so too are there varied positions on the application of various statutory provisions in this regard. We therefore seek comment on the appropriate interpretation of statutory interconnection requirements and other possible regulatory authority for the Commission to adopt a policy framework governing IP-to-IP interconnection. In addition, insofar as the Commission addresses IP-to-IP interconnection through a statutory framework historically applied to TDM traffic, we seek comment on whether any resulting changes will be required to the application of those historical TDM interconnection requirements, either through rule changes or forbearance.

1381. *Section 251.* We agree with commenters that "nothing in the language of [s]ection 251 limits the applicability of a carrier's statutory interconnection obligations to circuit-switched voice traffic"[2507] and that the language is in fact technology neutral.[2508] In addition, we seek comment on whether the provisions of section 251 interconnection are also service neutral, or do they vary with the particular services (e.g., voice vs. data, telecommunications services vs. information services) being exchanged? If so, on what basis, and in what ways, do they vary? A number of commenters go on to contend that the Commission can regulate IP-to-IP interconnection pursuant to section 251 of the Act.[2509] If the Commission were to adopt IP-to-IP interconnection regulations under the section 251 framework, would those regulations serve as a default in the absence of a negotiated IP-to-IP interconnection agreement between parties?[2510] In addition to those overarching considerations regarding the application of section 251 generally, we recognize that the scope of the interconnection requirements of sections

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causes of the problem and to discuss potential solutions with key stakeholders." *See FCC Announces Agenda for October 18 Rural Call Completion Workshop*, Public Notice, DA 11-1715 (rel. Oct. 14, 2011).

[2507] COMPTEL *USF/ICC Transformation NPRM* Comments at 5. "The Commission has already determined that Section 251 entitles telecommunications carriers to interconnect for the purpose of exchanging VoIP traffic with incumbent LECs and that a contrary decision would impede the development of VoIP competition and broadband deployment." *Id.* at 6 (citing *Time-Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, As Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3517, 3519-20, paras. 8, 13 (2007) (*Time Warner Cable Order*)).

[2508] *See, e.g.*, XO *USF/ICC Transformation NPRM* Reply at 5-6 ("Despite protestations of the ILECs, the interconnection obligations of sections 251 and 252 are technology neutral and not targeted to apply only to legacy TDM networks that existed at the time the Telecommunications Act was passed.").

[2509] *See, e.g.*, COMPTEL *USF/ICC Transformation NPRM* Comments at 4-9; XO *USF/ICC Transformation NPRM* Section XV Comments at 15-17; Cablevision *USF/ICC Transformation NPRM* Reply at 2-11; Letter from Donna N. Lampert, Counsel to Google Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 at 2-3 (filed June 16, 2011) (Google June 16, 2011 *Ex Parte* Letter).

[2510] *See* XO *USF/ICC Transformation NPRM* Comments at 31.

251(a)(1) and 251(c)(2) are tied to factual circumstances or otherwise circumscribed in various ways, and we seek comment below on the resulting implications in the context of IP-to-IP interconnection.

1382. *Section 251(a)(1).* Section 251(a)(1) of the Act requires each telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[2511] The Commission previously has recognized that this provision gives carriers the right to interconnect for purposes of exchanging VoIP traffic.[2512] However, could a carrier satisfy its obligation under section 251(a)(1) by agreeing to interconnect directly or indirectly only in TDM, or could the Commission require IP-to-IP interconnection in some circumstances?

1383. Section 251(a)(1) does not expressly specify how a particular pair of interconnecting carriers will decide whether to interconnect directly or indirectly.[2513] How should the Commission interpret section 251(a)(1) in this regard? If the Commission were to require IP-to-IP interconnection under section 251(a)(1), would this effectively require direct interconnection in situations where there was no third party that could facilitate indirect IP-to-IP interconnection? Would this be consistent with the Commission's prior interpretation of section 251(a)(1) that "telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices"?[2514] Should the Commission interpret section 251(a)(1) to allow the carrier requesting interconnection to decide whether interconnection will be direct or indirect or should we otherwise formally designate one of the carriers as entitled to insist upon direct (rather than indirect) interconnection? If so, which carrier should be entitled to make that choice, and how would such a framework be implemented?

1384. In general, how would IP-to-IP interconnection be implemented under section 251(a)(1)?[2515] To what extent should the Commission specify *ex ante* rules governing the rates, terms, and conditions of IP-to-IP interconnection under section 251(a)(1), or could those issues be left to case-by-case evaluation in state arbitrations or disputes brought before the Commission? If the Commission did not address these issues through *ex ante* rules, what standards or guidelines would apply in resolving disputes?

1385. *Section 251(c)(2).* Section 251(c)(2) requires incumbent LECs to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network," subject to certain conditions and criteria.[2516] Such interconnection is "for the transmission and routing of telephone exchange service and exchange access."[2517] Interconnection must be direct, and at any "technically feasible point within the carrier's network"[2518] that is "at least

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[2511] 47 U.S.C. § 251(a)(1).

[2512] *Interconnection Clarification Order*, 26 FCC Rcd at 8273-74 paras. 26-27.

[2513] *See, e.g.*, PAETEC *USF/ICC Transformation NPRM* Reply at 11, 12 ("Although section 251(a)(1) requires all telecommunications carriers to interconnect, it permits direct or indirect interconnection.").

[2514] *Local Competition First Report and Order*, 11 FCC Rcd at 15991, para. 997 (finding further that "indirect connection (*e.g.*, two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a)").

[2515] *See, e.g.*, PAETEC *USF/ICC Transformation NPRM* Reply at 13 ("[S]ection 251(a)(1) lacks the detail and standards necessary to establish the framework for IP-IP interconnection.").

[2516] 47 U.S.C. § 251(c)(2).

[2517] 47 U.S.C. § 251(c)(2)(A).

[2518] 47 U.S.C. § 251(c)(2)(B).

equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."[2519] Finally, incumbent LECs must provide interconnection under section 251(c)(2) "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[2520] We seek comment on whether the Commission should set a policy framework for IP-to-IP interconnection under section 251(c)(2), including on the specific issues below.

1386. We seek comment on the scope of an "incumbent local exchange carrier" for purposes of section 251(c)(2).[2521] The Commission has recognized that an entity that meets the definition of "incumbent local exchange carrier" in section 251(h) is treated as an incumbent LEC for purposes of the obligations imposed by section 251 even if it also provides services other than pure "telephone exchange service" and "exchange access."[2522] Thus, under the statute, an incumbent LEC retains its status as an incumbent LEC[2523] as long as it remains a "local exchange carrier."[2524]

1387. To the extent that, at some point in the future, an entity that historically was classified as an incumbent LEC ceased offering circuit-switched voice telephone service,[2525] and instead offered only VoIP service, we seek comment on whether that entity would remain a "local exchange carrier" (to the extent that it did not otherwise offer services that were "telephone exchange service" or "exchange access").[2526] We note that the Commission has not broadly determined whether VoIP services are

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[2519] 47 U.S.C. § 251(c)(2)(C).

[2520] 47 U.S.C. § 251(c)(2)(D).

[2521] 47 U.S.C. § 251(c)(2).

[2522] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, Order on Remand, 15 FCC Rcd 385, 388-91, paras. 7-14 (1999), *aff'd in pertinent part WorldCom v. FCC.*, 246 F.3d 690 (D.C. Cir. 2001).

[2523] It is nonetheless possible that an incumbent LEC's marketplace status could change such that forbearance from certain incumbent LEC regulations might be warranted. *See, e.g., Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Resale, Unbundling and Other Incumbent Local Exchange Requirements Contained in Sections 251 and 271 of the Telecommunications Act of 1996 in the Terry, Montana Exchange*, WC Docket No. 07-9, Memorandum Opinion and Order, 23 FCC Rcd 7257 (2008).

[2524] The definition of "incumbent local exchange carrier" in section 251(h) requires that the entity be a "local exchange carrier." 47 U.S.C. § 251(h)(1) ("For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, *the local exchange carrier* that" meets certain criteria) (emphasis added). *See also* 47 U.S.C. § 251(h)(2) (allowing the treatment of other local exchange carriers as incumbent LECs if certain conditions are met); *WorldCom v. FCC*, 246 F.3d at 694 (citing the Commission's brief and statements at oral argument "acknowledging that a carrier must still be a 'live LEC' to be an incumbent LEC"). A "local exchange carrier" is defined as "any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term." 47 U.S.C. § 153(26).

[2525] We note that an existing incumbent LEC's ability to discontinue such services would be contingent upon Commission approval based on, among other things, a "[s]tatement of the factors showing that neither present nor future public convenience and necessity would be adversely affected by the granting of the application." 47 C.F.R. § 63.505(i).

[2526] The provider might continue to offer special access services, for example, and thus remain a local exchange carrier (and thus an incumbent LEC) on that basis. *See, e.g., Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14860-61, para. 9 & n.15 (2005) (*Wireline Broadband Order*) (noting various high capacity access services, including Frame Relay and ATM, being offered on a common carrier basis).

"telecommunications services" or "information services," or whether such VoIP services constitute "telephone exchange service" or "exchange access." To what extent would the Commission need to classify VoIP services as "telecommunications services" or "information services" to resolve whether the provider remained a LEC?[2527] Under the reasoning of prior Commission decisions, we do not believe that a retail service must be classified as a "telecommunications service" for the provider carrying that traffic (whether the provider of the retail service or a third party) to be offering "telephone exchange service" or "exchange access."[2528] With specific respect to VoIP, we note that some providers contend that the classification of their retail VoIP service is irrelevant to determining whether "telephone exchange service" and/or "exchange access" is being provided as an input to that service.[2529] We seek comment on these issues.

1388. In addition, the record reveals that today, some incumbent LECs are offering IP services through affiliates. Some commenters contend that incumbent LECs are doing so simply in an effort to evade the application of incumbent LEC-specific legal requirements on those facilities and services,[2530] and we would be concerned if that were the case. We note that the D.C. Circuit has held that "the Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services."[2531] In reaching that conclusion, the court relied on the fact that the affiliate at issue was providing "services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent."[2532] That holding remains applicable here, but we also seek comment more broadly on when an

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[2527] Some commenters suggest that the Commission classified exchange access as a telecommunications service in the *Time Warner Cable Order* and/or *Universal Service First Report and Order*. *See* Cablevision-Charter Section XV Comments at 8 n.10 (citing *Time Warner Cable Order*, 22 FCC Rcd at 3517-19, paras. 9-12; *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9177-78, para. 785 (1997) (*Universal Service First Report and Order*)). Although those decisions recognize that exchange access can be offered on a common carrier basis, they do not address the question whether a service must be offered on a common carrier basis to constitute "exchange access."

[2528] *See, e.g.*, *ESP Exemption Order*, 3 FCC Rcd at 2631, 2635, para. 2 n.8; *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, CC Docket No. 98-79, 13 FCC Rcd 22466, 22469-70, para. 7 (1998) (*GTE DSL Order*). *See also supra* Section XIV.C.1.

[2529] *See, e.g.*, Cablevision-Charter Section XV Comments at 8-9 & n.14; Time Warner Cable Section XV Comments at 6-7; Bright House Section XV Reply at 3-4 n.6 *See also, e.g.*, COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 4 ("the continuing need for a regulatory backstop to negotiations for *wholesale* voice traffic exchange has no bearing on whether or how *retail* voice services offered to end users are regulated ") (emphasis in original).

[2530] *See, e.g.*, COMPTEL *USF/ICC Transformation NPRM* Comments at 7 ("In an apparent effort to shield their IP networks and SIP termination services from negotiated or arbitrated interconnection agreements with other carriers, AT&T, Verizon and CenturyLink/Qwest offer their Internet/IP services through various affiliates (AT&T Internet Services, Verizon Business, Qwest Long Distance) rather than through their regulated local exchange carrier operating companies that provide service predominantly over the public switched telephone network ('PSTN')."); PAETEC, *et al. USF/ICC Transformation NPRM* Reply at 4 ("AT&T has deployed soft switches in its unregulated affiliates, instead of its ILECs, and used this corporate shell game in an attempt to avoid any obligation to offer IP interconnection to requesting carriers."). *See also* Amicus Brief of tw telecom of texas *et al.*, PUC Docket No. 26381 at 3-5 *in* Letter from Mary C. Albert, COMPTEL, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 10-143 (filed Nov. 1, 2010) (COMPTEL Nov. 1, 2010 *Ex Parte* Letter).

[2531] *Ass'n of Commc'ns Enterprises v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001), *amended by Ass'n of Commc'ns Enterprises v. FCC* (D.C. Cir. Jan. 18, 2001) (*ASCENT*).

[2532] *Id.* In the *ASCENT* decision, the D.C. Circuit concluded that the Commission's interpretation of the Act, in seeking to allow SBC to avoid section 251(c) obligations through the use of an affiliate, was unreasonable "[w]hether one concludes that the Commission has actually forborne" from obligations imposed on the incumbent (continued...)

affiliate should be treated as an incumbent LEC under circumstances beyond those squarely addressed in that decision. What factors or considerations should be weighed in making that evaluation? Alternatively, to what extent would those same, or similar, considerations be necessary to a finding that the affiliate is a "successor or assign" of the incumbent LEC within the meaning of section 251(h)(1)?[2533] Could the affiliate be a "successor or assign" if it satisfies only a subset of those considerations or different considerations? As another alternative, even if an affiliate is not a "successor or assign" of the incumbent LEC under section 251(h)(1), would the Commission nevertheless be warranted to treat it as an incumbent LEC under section 251(h)(2)?[2534] To treat the affiliate as an incumbent LEC would require finding that it is a LEC, potentially implicating many of the same issues raised above regarding the classification of a retail VoIP provider or its carrier partner as a LEC.[2535] Would such affiliates be classified as LECs under the considerations raised above or based on other factors? If an affiliate is treated as an incumbent LEC in its own right under section 251(h)(1) or (h)(2), what are the implications for how section 251(c) applies? For example, if a requesting carrier were entitled to IP-to-IP interconnection with that affiliate under section 251(c)(2), could it use that interconnection arrangement to exchange traffic only with the customers of the affiliate, or could it use that arrangement to exchange traffic with the original incumbent LEC?

1389. Section 251(c)(2)(A) requires that interconnection obtained under 251(c)(2) be "for the transmission and routing of telephone exchange service and exchange access."[2536] We seek comment on whether traffic exchanged via IP-to-IP interconnection would meet those criteria. We note in this regard that some providers of facilities-based retail VoIP services state that they are providing those services on a common carrier basis,[2537] and expect that those services would include the provision of "telephone exchange service" and/or "exchange access" to the same extent as comparable services provided using TDM or other transmission protocols. Other providers of retail VoIP services assert that, regardless of the classification of the retail VoIP service, their carrier partners are providing "telephone exchange service"

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LEC (suggesting that the affiliate potentially could, in some sense, be viewed as part of the incumbent LEC, "or whether [the Commission's] interpretation of 'successor or assign' is unreasonable." *Id.* We seek comment on each of these scenarios (among others) below.

[2533] *See, e.g.*, Letter from Howard J. Symons, counsel for Cablevision, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket No. 01-92, 96-45, GN Docket No. 09-51, at 3-5 (filed Oct. 20, 2011) (Cablevision Oct. 20, 2011 *Ex Parte* Letter) (discussing the "successor or assign" analysis under Commission and court precedent).

[2534] 47 U.S.C. § 251(h)(2) provides that "The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section."

[2535] *See supra* para. 1386.

[2536] 47 U.S.C. § 251(c)(2)(A).

[2537] *See, e.g.*, Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom's Facilities-Based VoIP Services and IP-in-the-Middle Voice Services, WC Docket No. 11-119 (filed June 30, 2011).

and/or "exchange access."[2538] Although the record reveals that these carriers typically provide these services at least in part in TDM today,[2539] we do not believe that their regulatory status should change if they simply performed the same or comparable functions using a different protocol, such as IP. We seek comment on these views, as well as on the need to address this question given our holdings that carriers that otherwise have section 251(c)(2) interconnection arrangements for the exchange of telephone exchange service and/or exchange access traffic are free to use those arrangements to exchange other traffic—including toll traffic and/or information services traffic—with the incumbent LEC, as well.[2540]

1390. In the *Local Competition First Report and Order*, the Commission held "that an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others" is not entitled to interconnection under the language of section 251(c)(2)(A) because the IXC "is not seeking interconnection for the purpose of providing telephone exchange service," nor is it "offering access, but rather is only obtaining access for its own traffic."[2541] By contrast, some commenters assert that, in applying section 251(c)(2)(A), it is sufficient for the incumbent LEC to be providing "telephone exchange service" or "exchange access," regardless of whether the requesting carrier is doing so.[2542] We seek comment on this view. Under this interpretation, are there any circumstances when a requesting carrier would not be entitled to interconnection under section 251(c)(2) because the incumbent LEC is not providing telephone exchange service or exchange access? For example, might Congress have anticipated that incumbent LECs eventually would offer interexchange services on an integrated basis?[2543] To what extent was the Commission's prior interpretation the *Local Competition First Report and Order* motivated by commenters' concerns that an alternative outcome would permit IXCs to evade the pre-1996 Act exchange access rules, including the payment of access charges, which were preserved under section 251(g)?[2544] Would those concerns be mitigated insofar as the Commission is superseding the pre-existing access charge regime in the Order above? Are there other reasons why the new interpretation of section 251(c)(2)(A) is warranted?

1391. Section 251(c)(2)(B) requires interconnection at any "technically feasible point within the carrier's network."[2545] We observe that IP-to-IP interconnection arrangements exist in the marketplace today, and seek comment on whether they demonstrate that IP-to-IP interconnection is

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[2538] *See, e.g.*, Time Warner Cable Section XV Comments at 7; Cablevision-Charter Section XV Reply at 12; ; Bright House Section XV Reply at 3-4 n.6.

[2539] *See, e.g.*, Cablevision-Charter Section XV Comments at 4; Cbeyond *et al.* Section XV Comments at 12 n.35; TCA Section XV Comments at 2.

[2540] *See supra* Section XIV.C.2.d(i). As described above with respect to the broader use of section 251(c)(2) interconnection arrangements, it will be necessary for the interconnection agreement to specifically address such usage to, for example, address the associated compensation. *See supra id.*

[2541] *Local Competition First Report and Order*, 11 FCC Rcd at 15598-99, para. 191.

[2542] *See, e.g.*, Cablevision Oct. 20, 2011 *Ex Parte* Letter at 6-7.

[2543] *See, e.g.*, 47 U.S.C. § 272(f)(1) (providing for the sunset of, among other things, separate affiliate requirements for the BOCs' provision of in-region interLATA telecommunications services).

[2544] *See, e.g.*, *Local Competition First Report and Order*, 11 FCC Rcd at 15595-96, para. 188 & n.385 (summarizing commenters expressing concern that permitting the use of section 251(c)(2) interconnection purely for the provision of interexchange service would allow evasion of the access charge regime, which was preserved under section 251(g)). *But see id.* at 15598-99, para. 191 (interpreting section 251(c)(2)(A) without expressly referencing those concerns).

[2545] 47 U.S.C. § 251(c)(2)(B).

technically feasible at particular points within a carrier's network.[2546] To what extent does the requirement that incumbent LECs modify their "facilities to the extent necessary to accommodate interconnection or access to network elements"[2547] inform the evaluation whether IP-to-IP interconnection is technically feasible at particular points in the network?

1392. Section 251(c)(2)(C) requires that the interconnection provided by an incumbent LEC be "at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."[2548] To what extent are incumbent LECs interconnecting on an IP-to-IP basis with a "subsidiary, affiliate, or any other party" today, and at what quality? The Commission previously has interpreted this language to "require[] incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks."[2549] Consistent with this interpretation, to what extent must an incumbent LEC be using IP transmission in its own network before it could be required to provide IP-to-IP interconnection pursuant to this language, and to what extent is that occurring today?[2550] If the incumbent LEC is not otherwise interconnecting on an IP-to-IP basis with a "subsidiary, affiliate, or any other party," could the Commission require it to provide IP-to-IP interconnection as long as the other criteria of section 251(c)(2) are met? Should such interconnection be understood to be equal in quality to what the incumbent LEC provides others—albeit in a different protocol[2551]—or should it be understood to be requiring a "superior network"?[2552]

[2546] *See, e.g.*, Neutral Tandem *USF/ICC Transformation NPRM* Comments at 1-2; PAETEC *August 3 PN* Comments at 22-24. *See also* COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 11-12 ("'In comparing networks [for evaluating technical feasibility], the substantial similarity of network facilities may evidenced, for example, by their adherence to the same interface or protocol standards.'") (quoting *Local Competition First Report and Order*, 11 FCC Rcd at 15606, para. 204 (emphasis added)). Under Commission rules, the burden is on the "incumbent LEC that denies a request for a particular method of interconnection . . . [to] prove to the state commission that the requested method of interconnection . . . is not technically feasible." 47 C.F.R. § 51.323(d). Nonetheless, the Commission previously has elected to clarify certain methods of interconnection as technically feasible, and also to identify other categories as presumptively technically feasible. 47 C.F.R. §§ 51.323(b), (c).

[2547] *Local Competition First Report and Order*, 11 FCC Rcd at 15602, para. 198. As the Commission further concluded, "the 1996 Act bars consideration of costs in determining 'technically feasible' points of interconnection or access," although "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." *Id.* at 15603, para. 199. *But see, e.g.*, COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 7 n.13 ("Obviously, this paper does not suggest that an incumbent should be required to deploy a Managed Packet transport network to accommodate competitive entrants where it has not done so.").

[2548] 47 U.S.C. § 251(c)(2)(C).

[2549] *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15, para. 224.

[2550] *See, e.g.*, COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 1 (contending that incumbent LECs "are actively deploying Managed Packet transport networks themselves").

[2551] In the *Non-Accounting Safeguards Order*, the Commission distinguished the requirements of section 272(c)(1) from those in section 251(c)(2) because the "equal in quality" language in section 251(c)(2) permitted "requesting entities [to] require [an incumbent LEC] to provide goods, facilities, services, or information that are different from those that the [incumbent LEC] provides to itself or to its affiliates." *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act Of 1934, As Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22001, paras. 203-04 (1998) *remanded Bell Atlantic Telephone Companies v. FCC*, 1997 WL 307161 (D.C. Cir. Mar 31, 1997). *But see, e.g.*, *Verizon MD, DC, WV Section 271 Order*, 18 FCC Rcd 5212 at 5275-76, para. 107 (2003) (holding that Verizon's failure to pass ANI through MF signaling did not violate the "equal in quality" requirement because, "[a]lthough (continued...)

1393. Section 251(c)(2)(D) requires that incumbent LECs provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[2553] In the *Local Competition First Report and Order*, the Commission found that "minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection will be in the public interest and will provide guidance to the parties and the states in the arbitration process and thereafter."[2554] If the Commission concludes that IP-to-IP interconnection is required under section 251(c)(2), should it follow a similar approach and adopt minimum national standards? If so, what should those standards be? If not, what standards would be used to resolve arbitrations regarding the implementation of section 251(c)(2)?

1394. *Sections 201 and 332.* Historically, the Commission has imposed interconnection obligations pursuant to section 201 of the Act.[2555] Section 201 applies to interstate services, as well as to interconnection involving CMRS providers under section 332(c)(1)(B).[2556] Do sections 201 (and 332 in the case of CMRS providers) provide the Commission authority to mandate IP-to-IP interconnection, including for intrastate traffic either alone, or in conjunction with other provisions of the Act and the Clayton Act?[2557] If so, what standards or requirements would be appropriate, and how would those obligations be implemented? How should any IP-to-IP interconnection requirements regarding the exchange of access traffic be reconciled with the historical regulatory framework governing the exchange of such traffic with LECs, as well as with the Commission's action in the accompanying Order to supersede the preexisting access charge regime and adopt a transition to a new regulatory framework for intercarrier compensation for access traffic?

1395. *Section 706 of the 1996 Act.* Some commenters suggest that section 706 would provide the Commission authority to regulate IP-to-IP interconnection.[2558] We seek comment on the relationship between the Commission's statutory mandate in section 706 and regulation of IP-to-IP interconnection. If section 706 provides Commission authority to regulate IP-to-IP interconnection, what standards or requirements would be appropriate, and how would those obligations be implemented? If the Commission were to rely on section 706 of the 1996 Act to require IP-to-IP interconnection, would it also need to adopt associated complaint procedures, or could the existing informal and formal complaint processes, which derive from section 208, nonetheless be interpreted to extend more broadly than alleged violations of Title II duties?

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Verizon does pass the ANI to interexchange carriers for long distance calls, it does not pass the ANI to any carriers for *local calls*.").

[2552] *See, e.g., Iowa Utilities Board v. FCC*, 219 F.3d 744, 757-58 (2000) ("Subsection 251(c)(2)(C) requires the ILECs to provide interconnection 'that is at least equal in quality to that provided by the local exchange carrier to itself....' Nothing in the statute requires the ILECs to provide superior quality interconnection to its competitors.").

[2553] 47 U.S.C. § 251(c)(2)(D).

[2554] *Local Competition First Report and Order*, 11 FCC Rcd at 15611, para. 216.

[2555] *See, e.g., Eighth Report and Order*, 19 FCC Rcd at 9137-38, paras. 60-61; 47 U.S.C. § 201(a).

[2556] *See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497-98, para. 230 (1994) (*CMRS Second Report and Order*); 47 U.S.C. § 332(c)(1)(B).

[2557] *See supra* para. 1352.

[2558] *See, e.g.*, Sprint *USF/ICC Transformation NPRM* Reply, App. D at 9-12; COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 13.

1396. *Section 256.* There also is some record support for imposing IP-to-IP interconnection requirements under section 256 of the Act.[2559] Section 256(a)(2) says that the purpose of the section is "to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks."[2560] Do commenters agree that section 256 authorizes Commission regulation of IP-to-IP interconnection? In particular, to what extent could section 256 provide a source of authority for such regulation given the statement in section 256(c) that "[n]othing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996"?[2561] Even if it is not a direct source of authority in that regard, should it inform the Commission's interpretation and application of other statutory provisions to require IP-to-IP interconnection?

1397. *Title I Authority over IP-to-IP Interconnection.* Does the Commission have ancillary authority to regulate IP-to-IP interconnection? For example, Sprint notes that the Commission has subject matter jurisdiction over traffic such as packetized voice traffic,[2562] and asserts that regulation of IP-to-IP interconnection is reasonably ancillary to the Commission's authority under the Act.[2563] Sprint also asserts that its IP-to-IP interconnection proposals for the exchange of packetized voice traffic "are incidental to, and would affirmatively promote, specifically delegated powers under §§ 251-52" regarding network interconnection, intercarrier compensation, and dispute resolution.[2564] Sprint further argues that its proposed rules would advance other statutory policies regarding the promotion of competition, and the promotion of communications services, including advanced telecommunications services and the Internet, among other things.[2565] Thus, Sprint contends that " [even] if packetized voice services are . . . classified as information services, the Commission still possesses the authority to adopt these rule proposals under its Title I 'ancillary' authority."[2566] We seek comment on Sprint's analysis and other evaluations of whether the Commission has ancillary authority to regulate IP-to-IP interconnection in particular ways.[2567]

1398. *Other Sources of Authority.* We also seek comment on any other sources of Commission authority for adopting a policy framework for IP-to-IP interconnection. What is the scope and substance of the Commission's authority to address IP-to-IP interconnection under that authority?

[2559] *See* Google June 16, 2011 *Ex Parte* Letter at 2-3.

[2560] 47 U.S.C. § 256(a)(2).

[2561] 47 U.S.C. § 256(c); *see also Comcast*, 600 F.3d at 659 (acknowledging section 256's objective, while adding that section 256 does not "'expand[] . . . any authority that the Commission' otherwise has under law") (quoting 47 U.S.C. § 256(c)).

[2562] Sprint *USF/ICC Transformation NPRM* Reply, App. D at 3-4.

[2563] Sprint *USF/ICC Transformation NPRM* Reply, App. D at 4-9. *See also, e.g.*, T-Mobile *USF/ICC Transformation NPRM* Comments at 21-22 (arguing that the Commission has ancillary authority to regulate IP-to-IP interconnection).

[2564] Sprint *USF/ICC Transformation NPRM* Reply, App. D at 5-7.

[2565] Sprint *USF/ICC Transformation NPRM* Reply, App. D at 7-9.

[2566] Sprint *USF/ICC Transformation NPRM* Reply, App. D at 1.

[2567] *See, e.g.*, AT&T *USF/ICC Transformation NPRM* Reply at 20-21 (arguing that the Commission could not rely on ancillary authority to regulate IP-to-IP interconnection).

Q. Further Call Signaling Rules for VoIP

1399. In the Order accompanying this FNPRM, we adopt revised call signaling rules to address intercarrier compensation arbitrage practices that led to unbillable or "phantom" traffic. These rules apply to providers of interconnected VoIP service as that term is defined in the Commission's rules.[2568] We also adopt a framework of intercarrier compensation obligations that applies to all VoIP-PSTN traffic, which is defined as "traffic exchanged over PSTN facilities that originates and/or terminates in IP format"[2569] and includes voice traffic from interconnected VoIP service providers as well as providers of one-way VoIP service that allow end users to place calls to, or receive calls from the PSTN, but not both (referred to herein as "one-way VoIP service").[2570]

1400. We recognize that the scope of the intercarrier compensation obligations for VoIP providers adopted in the Order is broader than the definition of interconnected VoIP in our rules to which the call signaling obligations will apply. And, as with any instance where similar entities are treated differently under our rules, we are concerned about creating additional arbitrage opportunities. But, we also recognize that there may be technical difficulties associated with applying our revised call signaling rules to one-way VoIP service providers.[2571] The *August 3 Public Notice* sought comment on the application of call signaling rules to one-way VoIP service providers.[2572] There was relatively little comment on this issue, with some commenters suggesting that the Commission should not delay adoption of other intercarrier compensation reforms pending resolution of this issue.[2573] Now that the rules applicable to VoIP service providers adopted in the Order provide additional context, we seek comment again on the need for signaling rules for one-way VoIP service providers.[2574]

1401. If call signaling rules apply to one-way VoIP service providers, how could these requirements be implemented? Would one-way VoIP service providers have to obtain and use numbering resources? If call signaling rules were to apply signaling obligations to one-way VoIP service providers, at what point in a call path should the required signaling originate, i.e. at the gateway or elsewhere? Are there alternative approaches for how signaling rules could operate for originating callers that do not have a telephone number? In addition, would signaling rules be needed for all one-way VoIP service providers? Or, given the terminating carrier's need for the information provided under our signaling rules, is it sufficient to focus only on providers of one-way VoIP service services that allow users to terminate voice calls to the PSTN (but not those that only allow users to receive calls from the PSTN)?

1402. If one-way VoIP service providers were permitted to use a number other than an actual North American Numbering Plan (NANP) telephone number associated with an originating caller in

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[2568] *See* 47 C.F.R § 9.3. Interconnected VoIP providers as defined in our rules include, for example, a service similar to the service offered by Vonage, where customers are able to make calls to the PSTN and are able to receive calls from it.

[2569] *See supra* para. 940.

[2570] An example of a one-way interconnected VoIP service is Skype's "Call Phones or Mobile" service which allows users to make VoIP call from a computer to a PSTN telephone number. *See* http://www.skype.com/intl/en-us/features/allfeatures/call-phones-and-mobiles/.

[2571] *See, e.g.*, Level 3 Section XV Comments at 10-11 (seeking clarification that compliance would not require one-way interconnected VoIP providers to obtain numbering resources).

[2572] *See August 3 Public Notice*, 26 FCC Rcd at 11128-29.

[2573] NECA *et al. August 3 PN* Comments at 50-51.

[2574] We initially sought comment on several of these questions in a public notice released August 3, 2001. *See generally August 3 Public Notice.*

required signaling, would such use lead to unintended or undesirable consequences? If so, should other types of carriers or entities also be entitled to use alternate numbering? Would there need to be numbering resources specifically assigned in the context of one-way VoIP services? Are there other signaling issues that we should consider with regard to one-way VoIP calls?

R. New Intercarrier Compensation Rules

1403. Finally, we seek comment on whether the new rules adopted in the Order may result in any conflicts or inconsistencies.[2575] This could include conflicts or inconsistencies within the newly adopted rules or conflicts or inconsistencies between the new rules and the Commission's existing rules. If commenters believe conflicts or inconsistencies are present, we ask that they identify the specific rule or rules that may be affected, explain the perceived conflict or inconsistency, and propose language to address the conflict or inconsistency. Also, we seek comment on whether the new and revised rules we adopt today reflect all of the modifications to the intercarrier compensation regimes made in the Order. If not, we ask that parties identify in their comments the potential problem areas and propose specific language to address the possible oversight.

XVIII. DELEGATION TO REVISE RULES

1404. Given the complexities associated with modifying existing rules as well as other reforms adopted in this Order, we delegate authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau, as appropriate, to make any further rule revisions as necessary to ensure that the reforms adopted in this Order are properly reflected in the rules. This includes correcting any conflicts between the new or revised rules and existing rules as well as addressing any omissions or oversights. If any such rule changes are warranted, the Wireline Competition Bureau or Wireless Telecommunications Bureau, as appropriate, shall be responsible for such changes. We note that any entity that disagrees with a rule changed made on delegated authority will have the opportunity to file an Application for Review by the full Commission.[2576]

XIX. SEVERABILITY

1405. All of the universal service and intercarrier compensation rules that are adopted in this Order are designed to work in unison to ensure the ubiquitous deployment of voice and broadband-capable networks to all Americans. However, each of the separate universal service and intercarrier compensation reforms we undertake in this Order serve a particular function toward the goal of ubiquitous voice and broadband service. Therefore, it is our intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

XX. PROCEDURAL MATTERS

A. Filing Requirements

1406. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

[2575] *See infra* Appendix A.

[2576] *See* 47 U.S.C. § 155(c)(1).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

B. Paperwork Reduction Act Analysis

1407. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It has been or will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. We note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[2577] We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix O, infra.

1408. The Further Notice of Proposed Rulemaking (FNPRM) contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[2578] we seek specific comment on how we might "further reduce

[2577] *Connect America Fund, Developing a Unified Intercarrier Compensation*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; FCC 11-13, Proposed Rule, 76 FR 11632, 11633 (Mar. 2, 2011).

[2578] Pub. L. No. 107-198.

the information collection burden for small business concerns with fewer than 25 employees."[2579]

C. Congressional Review Act

1409. The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Final Regulatory Flexibility Analysis

1410. The Regulatory Flexibility Act (RFA)[2580] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[2581] Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the rule changes contained in the *Report and Order* on small entities. The Final Regulatory Flexibility Analysis is set forth in Appendix O.

E. Initial Regulatory Flexibility Analysis

1411. As required by the Regulatory Flexibility Act of 1980 (RFA),[2582] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Further Notice of Proposed Rulemaking*. The analysis is found in Appendix P. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the FNPRM and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

XXI. ORDERING CLAUSES

1412. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302, and sections 1.1 and 1.1421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, this [[Report and Order]] and Further Notice of Proposed Rulemaking ARE ADOPTED, effective [[thirty (30) days]] after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective [[immediately upon]] announcement in the Federal Register of OMB approval. It is our intention in adopting these rules that, if any of the rules that we retain, modify or adopt today, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

1413. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403 of the Communications Act of 1934, as

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[2579] 44 U.S.C. § 3506(c)(4).

[2580] *See* 5 U.S.C. § 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2581] 5 U.S.C. § 605(b).

[2582] *See* 5 U.S.C. § 603.

amended, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256 303(r), 332, 403, and 1302, and sections 1.1 and 1.1421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, this *Further Notice of Proposed Rulemaking* IS hereby ADOPTED.

1414. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on Sections XVII.A-K of the *Further Notice of Proposed Rulemaking* on or before January 18, 2012, and reply comments on or before February 17, 2012, and comments on section XVII.L-R of this *Further Notice of Proposed Rulemaking* on or before February 24, 2012, and reply comments on or before March 30, 2012.

1415. IT IS FURTHER ORDERED, that the Petition of All American Telephone Co., Inc., e.Pinnacle Communications, Inc., and ChaseCom Regarding Agreements between Local Exchange Carriers and Service Providers filed on May 20, 2009 is DISMISSED.

1416. IT IS FURTHER ORDERED, that the Petition of AT&T For Interim Declaratory Ruling and Limited Waivers filed on July 17, 2008 is DENIED in part and DISMISSED as moot and WC Docket No. 08-152 is terminated.

1417. IT IS FURTHER ORDERED, that the Petition of Embarq Local Operating Companies for Waiver of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions filed on August 1, 2008 is DISMISSED as moot and WC Docket No. 08-160 is terminated.

1418. IT IS FURTHER ORDERED, that the Joint Michigan CLEC Petition for Declaratory Ruling that the State of Michigan's Statute 2009 PA 182 is Preempted Under Sections 253 and 254 of the Communications Act and Motion for Temporary Relief filed on February 12, 2010, is DISMISSED as moot and WC Docket No. 10-45 is terminated.

1419. IT IS FURTHER ORDERED, that the Petition of Global NAPS for Declaratory Ruling and for Preemption of the PA, NH and MD State Commissions filed on March 5, 2010 is GRANTED in part and DENIED in part and WC Docket No. 10-60 is terminated.

1420. IT IS FURTHER ORDERED, that the Petition of Vaya Telecom, Inc. Regarding LEC-to-LEC VoIP Traffic Exchanges filed on August 26, 2011 is GRANTED in part and DENIED in part.

1421. IT IS FURTHER ORDERED, that the Petition of Grande for Declaratory Ruling Regarding Compensation for IP-Originated Calls filed on October 3, 2005 is DENIED and WC Docket No. 05-283 is terminated.

1422. IT IS FURTHER ORDERED, that the Petition for Reconsideration of the American Association of Paging Carriers filed on April 29, 2005 is DENIED.

1423. IT IS FURTHER ORDERED, that the Rural Cellular Association Petition for Clarification or in the Alternative, Petition for Reconsideration, filed on April 29, 2005 is DENIED.

1424. IT IS FURTHER ORDERED, that pursuant to sections 201 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Petition for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules of Hawaiian Telcom, Inc. filed on December 31, 2007 is DENIED.

1425. IT IS FURTHER ORDERED that pursuant to sections 201 and 254 of the

Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration of Verizon Wireless filed on May 2, 2011 is DENIED

1426. IT IS FURTHER ORDERED that pursuant to sections 201 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration of Allied Wireless Communications Corp., et al., filed on October 4, 2010 is DENIED.

1427. IT IS FURTHER ORDERED that pursuant to sections 201 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Partial Reconsideration of SouthernLINC Wireless and the Universal Service for America Coalition filed on September 29, 2010 is DENIED.

1428. IT IS FURTHER ORDERED, that Parts 0, 1, 36, 51, 54, 61, 64, and 69 of the Commission's rules, 47 C.F.R. Parts 0, 1, 36, 51, 54, 61, 64 and 69, are AMENDED as set forth in Appendices [[XX], and such rule amendments shall be effective [[30 days]] after the date of publication of the rule amendments in the Federal Register, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review WILL BECOME EFFECTIVE following approval by the Office of Management and Budget.

1429. IT IS FURTHER ORDERED, that the Commission SHALL SEND a copy of this [[Report and Order and Further Notice of Proposed Rulemaking]] to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

1430. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this [[Report and Order and Further Notice of Proposed Rulemaking]], including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 20, 36, 51, 54, 61, 64, 69 to read as follows:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

2. Amend § 0.91 by adding paragraph (p) as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(p) In coordination with the Wireless Telecommunications Bureau, serves as the Commission's principal policy and administrative staff resource with respect to the use of market-based mechanisms, including competitive bidding, to distribute universal service support. Develops, recommends and administers policies, programs, rules and procedures concerning the use of market-based mechanisms, including competitive bidding, to distribute universal service support.

3. Amend § 0.131 by adding paragraph (r) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(r) In coordination with the Wireline Competition Bureau, serves as the Commission's principal policy and administrative staff resource with respect to the use of market-based mechanisms, including competitive bidding, to distribute universal service support. Develops, recommends and administers policies, programs, rules and procedures concerning the use of market-based mechanisms, including competitive bidding, to distribute universal service support.

PART 1 – PRACTICE AND PROCEDURE

4. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

5. Add new subpart AA to part 1 to read as follows:

Subpart AA – Competitive Bidding for Universal Service Support

Sec.

§ 1.21000 Purpose.

This subpart sets forth procedures for competitive bidding to determine the recipients of universal service support pursuant to part 54 and the amount(s) of support that each recipient respectively may receive, subject to post-auction procedures, when the Commission directs that such support shall be determined through competitive bidding.

§ 1.21001 Participation in Competitive Bidding for Support.

(a) Public Notice of the Application Process. The dates and procedures for submitting applications to participate in competitive bidding pursuant to this subpart shall be announced by public notice.

(b) Application Contents. An applicant to participate in competitive bidding pursuant to this subpart shall provide the following information in an acceptable form:

(1) The identity of the applicant, i.e., the party that seeks support, including any required information regarding parties that have an ownership or other interest in the applicant;

(2) The identities of up to three individuals authorized to make or withdraw a bid on behalf of the applicant;

(3) The identities of all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding;

(4) Certification that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding;

(5) Certification that the applicant and all applicable parties have complied with and will continue to comply with § 1.21002;

(6) Certification that the applicant is in compliance with all statutory and regulatory requirements for receiving the universal service support that the applicant seeks;

(7) Certification that the applicant will make any payment that may be required pursuant to § 1.21004;

(8) Certification that the individual submitting the application is authorized to do so on behalf of the applicant; and

(9) Such additional information as may be required.

(c) Financial Requirements for Participation. As a prerequisite to participating in competitive bidding, an applicant may be required to post a bond or place funds on deposit with the Commission in an amount based on the default payment that may be required pursuant to § 1.21004. The details of and deadline for posting such a bond or making such a deposit will be announced by public notice. No interest will be paid on any funds placed on deposit.

(d) Application Processing. (1) Any timely submitted application will be reviewed by Commission staff for completeness and compliance with the Commission's rules. No untimely applications shall be reviewed or considered.

(2) An applicant will not be permitted to participate in competitive bidding if the application does not identify the applicant as required by the public notice announcing application procedures or does not include all required certifications, as of the deadline for submitting applications.

(3) An applicant will not be permitted to participate in competitive bidding if the applicant has not provided any bond or deposit of funds required pursuant to § 1.21001(c), as of the applicable deadline.

(4) An applicant may not make major modifications to its application after the deadline for submitting the application. An applicant will not be permitted to participate in competitive bidding if Commission staff determines that the application requires major modifications to be made after that deadline. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or any changes in the identity of the applicant, or any changes in the required certifications.

(5) An applicant may be permitted to make minor modifications to its application after the deadline for submitting applications. Minor modifications may be subject to a deadline specified by public notice. Minor modifications include correcting typographical errors and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(6) After receipt and review of the applications, an applicant that will be permitted participate in competitive bidding shall be identified in a public notice.

§ 1.21002 Prohibition of Certain Communications During the Competitive Bidding Process.

(a) Definition of Applicant. For purposes of this paragraph, the term "applicant" shall include any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.

(b) Certain Communications Prohibited. After the deadline for submitting applications to participate, an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support, unless such applicants are members of a joint bidding arrangement identified on the application pursuant to § 1.21001(b)(4).

(c) Duty To Report Potentially Prohibited Communications. An applicant that makes or receives communications that may be prohibited pursuant to this paragraph shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.

(d) Procedures for Reporting Potentially Prohibited Communications. Particular procedures for parties to report communications that may be prohibited under this rule may be established by public notice. If no such procedures are established by public notice, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division by the most expeditious means available, including electronic transmission such as email.

§ 1.21003 Competitive Bidding Process.

(a) Public Notice of Competitive Bidding Procedures. Detailed competitive bidding procedures shall be established by public notice prior to the commencement of competitive bidding any time competitive bidding is conducted pursuant to this subpart.

(b) Competitive Bidding Procedures. The public notice detailing competitive bidding procedures may establish any of the following:

(1) Limits on the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process, as well as procedures for parties to report the receipt of such non-public information during such periods;

(2) The way in which support may be made available for multiple identified areas by competitive bidding, *e.g.*, simultaneously or sequentially, and if the latter, in what grouping, if any, and order;

(3) The acceptable form for bids, including whether and how bids will be accepted on individual items and/or for combinations or packages of items;

(4) Reserve prices, either for discrete items or combinations or packages of items, as well as whether the reserve prices will be public or non-public during the competitive bidding process;

(5) The methods and times for submission of bids, whether remotely, by telephonic or electronic transmission, or in person;